

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 30, 2017

The Honorable Joe Straus
Texas House of Representatives
Capitol Station
PO Box 2910
Austin, Texas 78768-2910

Re: Responsibility of the Texas Commission on Environmental Quality (TCEQ) Pursuant to Article XVI, Section 59(d), Texas Constitution

House Bill (HB) 2180, as Filed by Representative Dan Flynn - Relating to the Sulphur River Basin Authority, following recommendations of the Sunset Advisory Committee.

Dear Speaker Straus:

The following comments are provided pursuant to the Constitutional requirements referenced above. Under those requirements, the TCEQ must submit, to the Governor, Lieutenant Governor and Speaker of the House of Representatives, the TCEQ's recommendations on specific legislation affecting water districts. We recommend that these comments be considered in the evaluation of the proposed legislation.

This bill amends provisions of Chapter 3, Acts of the 69th Legislature, 1st Called Session, 1985 relating to Sulphur River Basin Authority (District); the bill amends Section 1A(a) by amending the scheduled date for the District to be abolished from September 1, 2017, to September 1, 2029; the bill amends Section 2(11) by removing solid waste or "any other waste" from the definition of waste; the bill amends Section 3(a) by specifying that the maps showing District territory are on file with the Texas Water Development Board instead of the Texas Department of Water Resources; the bill amends Section 4 by removing recreation and pleasure and conservation of forests and hydroelectric power from the District's purpose; the bill amends Section 6 by: increasing the number of members on the board from six to seven, and specifying that the additional board member shall be appointed to represent the District at large; making non-substantive changes to the bill to remove references to previous time periods or information made irrelevant by this bill; requiring the governor to designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor; and specifying that a person appointed to the board on or before January 1, 2016, is not eligible for reappointment to the board and that a person appointed to the board after January 1, 2016, is eligible for reappointment; the bill adds Section 6A which specifies that: a person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section; a person appointed to the board is entitled to reimbursement for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office; and

the board shall create a training manual and distribute a copy of the training manual annually to each member of the board; the bill adds Section 6B which requires the board to develop a policy to encourage the use of: negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of District rules; and appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the District's jurisdiction. Additionally, the District's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Also the District shall: coordinate the implementation of the policy adopted under this section; provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect data concerning the effectiveness of those procedures; the bill amends Section 8 by allowing a director's compensation to be increased as authorized by Section 49.060, Water Code, by resolution adopted by the board in accordance with Subsection (e) of that section on or after September 1, 1995; the bill adds Section 10A which requires the board to develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and staff of the District; the bill adds Section 13A which requires the district to: maintain a system to promptly and efficiently act on complaints filed with the District including information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition; make information available describing its procedures for complaint investigation and resolution; and periodically notify the complaint parties of the status of the complaint until final disposition; the bill removes from Section 17, the District's authority to exercise the powers of control and use of the state's water to provide for the control, storage, and use of storm water, floodwater, and unappropriated flow water in the development and distribution of hydroelectric power, where this use may be economically coordinated with other and superior uses, and subordinated to the uses declared by law to be superior. Additionally, the bill revises Section 17 to require the District to adopt and implement a program of water conservation consistent with rules and criteria duly adopted and enforceable by the "commission and development board" instead of the "department"; the bill amends Section 23 by removing "franchises" from the grants of authority required from the commission. Additionally, the bill requires that before voting on a proposed project for which the board will seek a permit, the board shall obtain advice on the proposed project from the county judge of each county in which the proposed project is proposed to be located; the bill amends Section 24(a) by removing the authority to enter into service contracts for solid waste collection and the use of park and recreational facilities; the bill amends Section 29 by specifying that the District may: undertake and carry out any activities that are related to or necessary in carrying out or performing any power or function of the District; enter into contracts, loan agreements, leases, or installment sales agreements; and acquire, purchase, construct, own, operate, maintain, repair, improve, or extend, and loan, lease, sell, or otherwise dispose of, including by such methods as loan payments, rentals, sales, and installment sales, as the parties may agree, any facilities, plants, buildings, structures, equipment, and appliances, property or any interest in property. Additionally the bill removes the authority to use such methods as loan payments, rentals, sales, and installment sales to accomplish the aforementioned activities; and, the bill repeals four sections of the enabling act for the Authority as follows: Section 2(5), which defines "Department" as the Texas Department of Water Resources; Section 18, which authorized the

Hon. Joe Straus
Page 3
March 30, 2017

Authority to engage in foresting activities in the basin; Section 21, which authorized the Authority to furnish solid waste services; and, Section 22, which allowed the Authority to acquire land for park and recreational purposes.

Sincerely,

A handwritten signature in black ink that reads "Cari-Michel LaCaille". The signature is written in a cursive, flowing style.

Cari-Michel LaCaille, Director
Water Supply Division

cc: The Honorable Lyle Larson, Chairman, House Natural Resources Committee
Representative Dan Flynn, Texas House of Representatives

LETTER OF TRANSMITTAL
HOUSE OF REPRESENTATIVES
STATE OF TEXAS

HB 2180

Bill Number

TO: The Honorable Governor of Texas
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to transmit to you and the Texas Commission on Environmental Quality copies of a bill relating to a conservation and reclamation district and copies of the notice of intention to introduce the bill. One copy is for your files and one for you to forward to the Texas Commission on Environmental Quality, under Section 59(d), Article XVI, Constitution of the State of Texas.

2/24/2017

Date transmitted to
Governor's Office


Chief Clerk
House of Representatives

TO: Texas Commission on Environmental Quality
SUBJECT: A Bill Relating to a Conservation and Reclamation District

This is to forward to you a copy of a bill relating to conservation and reclamation district and a copy of the notice of intention to introduce the bill.

March 3, 2017

Date transmitted to
Texas Commission on Environmental Quality



Governor

TO: The Honorable Speaker of the House
The Honorable President of the Senate
The Honorable Governor of Texas
SUBJECT: A Bill Relating to a Conservation and Reclamation District

Attached are recommendations of the Texas Commission on Environmental Quality in compliance with Section 59(d), Article XVI, Constitution of the State of Texas.


Texas Commission on Environmental Quality



85R HB 02180